

CITY OF SAN JOSÉ, CALIFORNIA  
Redevelopment Agency of the City of San Jose  
50 W. San Fernando Street, Suite 1100  
San José, California 95110

## STAFF REPORT

Hearing Date/Agenda Number  
PC Agenda: 7-9-03 Item: 3.

File Number  
RCP03-016

Application Type  
Conditional Use Permit

Council District  
3

Planning Area  
Downtown Core

Assessor's Parcel Number(s)  
467-22-007

### PROJECT DESCRIPTION

Completed by: Amie Glaser

Location: 52 South First Street

Gross Acreage: 0.08

Net Acreage: N/A

Net Density: n/a

Existing Zoning: CG

Existing Use: Restaurant / Bar

Proposed Zoning: n/a

Proposed Use: The Temple - Operation of a bar and nightclub, including after-midnight use with live entertainment

### GENERAL PLAN

Completed by: AG

Land Use/Transportation Diagram Designation  
Core Area

Project Conformance: ☒ Yes ☐ No  
☒ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: AG

North: Commercial Restaurant

CG (Commercial General)

East: Fountain Alley, Vacant Site

CG (Commercial General)

South: Vacant Retail, Office

CG (Commercial General)

West: Retail, Office

CG (Commercial General)

### ENVIRONMENTAL STATUS

Completed by: AG

☒ Environmental Impact Report found complete April 27, 1999  
☐ Negative Declaration circulated on

☐ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: AG

Annexation Title: Original City

Date: n/a

HISTORIC STATUS: Contributor to National Register District

Completed by: AG

### REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION

☐ Approval  
☒ Approval with Conditions

Date: 7-9-03

Approved by: \_\_\_\_\_

Approved by: \_\_\_\_\_  
☐ Action ☐ Recommendation

### APPLICANT

### OWNER

Rick Cole  
404 North 13<sup>th</sup> Street  
San Jose, CA 95112

JB Carlson, LLC  
56 South First Street  
San Jose, CA 95113

---

**PUBLIC AGENCY COMMENTS RECEIVED****Completed by: AG**

---

**Department of Public Works**

See Conditions of Approval

---

**Other Departments and Agencies**

Police Department – See Conditions of Approval

---

**GENERAL CORRESPONDENCE**

---

None Received

---

**ANALYSIS AND RECOMMENDATIONS**

---

**PROJECT DESCRIPTION**

The project site is located 52 South First Street. The site is developed with a commercial building in the Commercial General (CG) and (DG) Ground Floor Retail Zoning Districts. The property owner is requesting a Conditional Use Permit (CUP) to allow operation of a bar and nightclub, The Temple, with entertainment and after-midnight use.

The entire site is currently occupied by Bella Mia restaurant. The proposed bar and nightclub will take over approximately half of the building where the bar area of Bella Mia is currently located. Bella Mia will continue to operate as a full restaurant in the remaining half of the building. No exterior changes are being requested as a part of this CUP. Exterior changes would need to be reviewed by the Historic Landmarks Commission because the site is located within a Historic District.

The proposed hours of operation are 10:00 AM to 2:00 AM, daily. The Zoning Ordinance 20.40.500 requires that any establishment, other than office uses, in any Commercial District, obtain a CUP in order to operate between the hours of 12:00 AM and 6:00 AM.

**GENERAL PLAN CONFORMANCE**

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows a range of “office, retail, service, residential, and entertainment uses in the Downtown Core Area.” More specifically, late night, entertainment-oriented uses, such as bars and nightclubs, are encouraged to locate in the Core Area rather than in other less appropriate areas of the City so long as they do not impact neighboring uses. Given the project’s location, the proposed use is consistent with the General Plan and the Core Area designation.

**ENVIRONMENTAL REVIEW**

Pursuant to Section 15180 of the 2001 CEQA Guidelines, the City of San Jose has determined that the project will not create new significant environmental impacts beyond those analyzed in the Final

Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.

## **ANALYSIS**

Through the subject CUP, the applicant proposes to operate a restaurant and drinking establishment, with entertainment, between the hours of 9:00 AM and 2:00 AM, daily. Such uses are subject to the City Council's 24-hour Use Policy, Guidelines for Evaluation of Nightclubs and Bars and the City's Zoning Ordinance. The objective of these policies and ordinances is to ensure that late-night uses, particularly bars and nightclubs, are compatible with surrounding land uses. A key provision of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address the project's operational compatibility within its surroundings.

### **Compliance with City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars**

The Temple would be limited in operation to no later than 2 AM. These provisions are consistent with the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars, where after midnight uses are encouraged to locate within the Downtown. The Temple's location, amid adjacent restaurant and commercial uses, is compatible with surrounding land uses.

### **Land Use Compatibility**

The subject property is surrounded by commercial uses in all directions. There are currently no residential uses within 500 feet of the subject property. To the north there is general retail and a restaurant, to the south, east and west there are general commercial businesses including offices, restaurant, retail, and vacant retail space. The proposed use, located in the Downtown Core, adjacent to other similar uses with similar hours of operation, is compatible with existing adjacent commercial land uses such as the Lido, Mission Ale House, and Voodoo Lounge.

### **Parking**

The subject site is located in the Downtown Parking Management Zone and its parking requirements are governed by Section 20.90.510 of the Municipal Code. Based on the provisions of Section 20.90.510, parking is not required for public eating or drinking establishments and nightclubs, such as The Temple. The site, which is fully developed with the existing building does not include any off-street parking. However, nearby parking facilities (i.e., public garage, on-street parking) will be able to serve patrons and employees of the facility.

## **CONCLUSION**

Based on the analysis above, Staff believes that the proposed drinking establishment with live entertainment and after midnight use is consistent with the requirements of the Zoning Ordinance, General Plan, and City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars. In

addition, the conditions of approval (below) will help to ensure the project's operational compatibility within its surroundings

## **FACTS**

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit (CUP) to operate a bar and nightclub with live entertainment and after-midnight operations, between the hours of 10:00 AM and 2:00 AM, daily.
2. The project site is approximately 0.08 acres and is located in the Commercial General (CG) and Ground Floor Retail (DG) Zoning Districts.
3. A Conditional Use Permit is required for the operation of an entertainment and drinking establishment with after-midnight use in the CG Zoning District.
4. The project site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram.
5. The Core Area designation provides that bars and nightclubs may be located within the downtown Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives.
6. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.
7. The subject site is surrounded by a variety of commercial uses. No residential uses are located within 500 feet of the project site.
8. The subject site is located in the Downtown Parking Management Zone. Based on the parking provisions for the Downtown Parking Management Zone (Municipal Code, Section 20.90.510), parking is not required for eating, drinking, and entertainment establishments.
9. The project is consistent with the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars.
10. The project does not include any exterior changes to the structure.
11. An Entertainment Permit issued by the Police Department is required for live entertainment.

## **RECOMMENDATION**

Agency staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the project will comply with the provisions of the Commercial General (CG) and Ground Floor Retail (DG) Zoning District in that the operation of a drinking and entertainment establishment; and commercial use between the hours of 12:00 AM and 6:00 AM requires the approval of a Conditional Use Permit.
2. The project conforms to the with the San Jose 2020 General Plan in that it proposes the operation of a drinking and entertainment establishment within the Downtown Core Area.
3. This project is consistent with the City Council Policies on 24-Hour Use and Bars and Nightclubs in that it proposes the operation of a drinking and entertainment establishment, with after midnight use, in an area of downtown predominately developed with commercial land uses.
4. The project conforms to the California Environmental Quality Act in that is does not create impacts not previously addressed in the Downtown Strategy Plan Final Supplemental EIR.
5. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

## **FINDINGS**

Based upon the above-stated analysis and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location will not:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the proposed entertainment and drinking establishment uses are consistent with the commercial uses of the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site because the proposed restaurant and drinking establishment will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
  - c. Be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839) and police reports of past experience in the area corroborate that such use will not adversely affect the public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
- b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of existing service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of the following conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

### **CONDITIONS PRECEDENT**

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all requirements of the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

### **CONCURRENT CONDITIONS**

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Hours of Operation. The hours of operation for the nightclub and bar, will be limited to 10:00 AM to 2:00 AM, daily. With alcohol service and live entertainment ending at 1:30 AM.
4. Security. A minimum of two security officers shall be on duty for every 100 patrons using the drinking establishment portion of the facility during its hours of operation.

5. Noise and Acoustics.

- a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
- b. Noise emission shall comply with the policies identified in the Noise Element of the San Jose 2020 General Plan.

6. Trash, Refuse, Garbage and Litter.

- a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontages.
- b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, daily.
- c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
- d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way.

8. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.

9. Entertainment Permit. The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.

**CONDITIONS SUBSEQUENT**

1. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350, of the San Jose Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use presently conducted creates a nuisance.
2. Compliance Review. A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.

3. Time Limit. This Conditional Use Permit expires and has not further force or effect five (5) years from the date of approval. This permit may be renewed in accordance with condition number five, below. Please note that this conditional use permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.
4. Renewal. The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.